IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 435 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESH GOVINDBHAI CHAVDA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
MR AJ DESAI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 13/11/2006

ORAL JUDGMENT

1. The present Criminal Appeal under section 374(2) of the Code of Criminal Procedure, 1973 has been preferred by the appellant Govindbhai Nathubhai

Chavda- original convict accused against the judgment and order of conviction and sentence dated 04.05.1990 passed by the ld. Special Judge, Junagadh in Special Case No.3/1985 whereby the ld. Trial Judge has convicted the appellant accused for the offence punishable under section 5(2) of the Prevention of Corruption Act (hereinafter referred to as the PC Act) and also under section 161 of the Indian Penal Code and sentenced him to undergo R/I for 1 Year and to pay a fine of Rs.2000/- I/d to undergo further R/I for 3 months. However, the ld. Trial Judge, though convicted the appellant accused for the offence punishable under section 161 of the Indian Penal Code, has not awarded any separate sentence for the said offence. After preferring the present appeal, the appellant-original accused had expired on 20.09.1999 on his committing suicide along with his wife. In the aforesaid unfortunate incident, wife of the appellant accused had also expired. By filing Cri.Misc.Application No.7341/1999, son of the deceased accused brought these facts to the notice of the Court and also prayed to permit him to continue with the criminal appeal as he has shown his

inclination to have final outcome of the appeal preferred by his deceased father. The death of the original accused was registered under the relevant Registration Rules on 01.12.1999 and thereafter the aforesaid Criminal Misc. Application came to be allowed by this Court vide order dated 08.12.1999 and Jayeshbhai- son of the deceased appellant accused was permitted to continue the criminal appeal. Thus, this Court is supposed to appreciate the legality and validity of the conviction recorded by the ld. Trial Judge only and no formal finding with regard to the legality and validity of the sentence imposed by the trial Court is required to be recorded because there is nobody to serve out the sentence in the event this Court upholds the sentence awarded or reduces the same. So, at present, this Court is to consider the propriety, legality and validity of the order of conviction passed by the trial Judge only.

2. The ld. Sr.Counsel Mr. Shethna has taken this court through the main grounds of challenge mentioned in the memo of the appeal and it is argued that the ld. Trial Judge has grossly erred in holding the

appellant accused guilty of the charges levelled against him. Firstly, it is argued that the version of the original complainant is not acceptable and is not trustworthy because he has attempted to implicate the accused forcibly into the crime, otherwise, there was no motive for the accused to accept the amount of bribe for mutation of entry in the revenue record maintained by the government. The second argument advanced by Mr. Shethna is that there is no evidence on record to show that the amount of bribe was ever demanded by the accused so far as the alleged demand made on 23.05.1985 is concerned and thereafter on the date of incident in presence of panch No.1 Sharad Hathi at the instance of the original accused. The third argument advanced by Mr. Shethna is that there are ample circumstances to infer that the muddamal currency notes were forcibly given in the hands of the accused by the complainant when he realized that his attempt to book the accused is likely to fail. Undisputedly, on second visit, the accused was found in the residence. On first occasion when the complainant along with panch Mr. Hathi visited the residence of the accused,

the accused was not there at 8.30 p.m. and, therefore, the second attempt was made at 9.00 p.m. after about half an hour. It is argued that Mr. Sarvaiya, ACB Inspector, ought to have drawn the “nil” panchanama and could have closed the trap arranged by him. It appears that this was the joint effort of Mr. Sarvaiya and the complainant to see that the accused is trapped and, therefore, the accused was forcibly given muddamal currency notes of Rs.400/ i.e. four notes of the denomination of Rs.100/ each as mentioned in the panchanama. One more argument advanced by Mr. Shethna is that the present case is stained by one more infirmity i.e. infirmity in selecting the panch. It was the duty of Mr. Sarvaiya to ascertain from panch Mr. Hathi whether he has ever appeared as a panch in such or similar cases or any other similar antecedents are there against him. No such inquiry was made by Mr. Sarvaiya is the admission of Mr. Sarvaiya i.e. the Raiding Officer and the accused has brought on record that on relevant date the panch Mr. Hathi was facing two criminal prosecution viz. one for the offences punishable under section 420 R/w 114 of IPC and other

one for the offences punishable under the provisions of the Gujarat Essential Services Maintenance Act,1976 as he was found involved in joining the strike against the Reservation Policy of the government in the year 1985. Normally, a person of the repute of having no stigmatic character requires to be selected in such or similar cases and this inadvertence or negligence on the part of the IO has resulted into serious infirmity and this infirmity would go to the root of the evidence led by the prosecution. No credit can be given to the deposition /evidence of panch No.1 and other evidence ought not to have been read as a corroborative piece of evidence qua the evidence led by the complainant. The next point argued by Mr. Shethna is that the ld. Trial Judge has failed in considering the documents produced by the accused with his explanation and plausibility of the explanation given by the accused under section 313 of CrPC. On the contrary, the work of the original accused was appreciated on more than one occasion. He was considering to be reliable person and, therefore, he was kept in charge of ambulance and the ambulance was also kept at his

residence and was maintaining the accounts in this regard. He was also given a letter of appreciation for his duties that he had performed in family welfare activities by the Asstt. Collector. The accused had denied the evidence given by the complainant and panch No.1 and he has satisfactorily explained as to why some delay has been caused in entering the name of the complainant along with his brother and sister in the government record after the death of his father Jivrajbhai. The conduct of the accused goes contrary to the allegations made against him. The case of the prosecution ought not to have been accepted by the Court observing that normally no accused would retain or keep the muddamal currency notes in his hands and would catch hold the same even after the entry of raiding officer Mr. Sarvaiya and others. Mostly, he could have thrown the muddamal currency notes any where when after listening the shouts in the nature of a signal. Therefore, the panchanama of recovery of muddamal currency notes from the right hand of the accused should not be accepted as reliable piece of evidence and the oral evidence of the complainant as well as of Mr.

Sarvaiya also should not be accepted.

3. It is next argued by Mr. Shethna that ACB Inspector Mr. Sarvaiya has shown unwarranted enthusiasm in the present case and it goes against the credibility and objective approach which should be the paramount consideration in such cases because he is the officer who had provided special set of cloths to panch No.1 which are being traditionally put on by the persons residing of the community known as “Patel” of Saurashtra area in the area where the raid is carried out. Panch No.1 was provided “Choli” and “Bandiya”. He was to be introduced as first cousin of the maternal uncle's son of the complainant. Though district Junagadh has its own ACB Office, surprisingly, Rajkot ACB Office was selected and both the panchas were also selected from Rajkot by Mr. Sarvaiya. In this situation, the investigation carried out by and the panchanama drawn by this officer should not be accepted as a reliable piece of evidence and his oral evidence should be discarded as evidence of a person who is interested in a particular result.

4. It has been further argued by ld. Sr. Counsel

Mr. Shethna that the government servants have a tendency to support the prosecution in ACB case so that they can avoid departmental proceedings. By showing relevant documents i.e. certified copy of the village form No.6, 8/A and Rojnama drawn in presence of the reputed persons of the village wherein the names of the legal heirs of the deceased Shivrajbhai have been mentioned, it is submitted that the entry in the revenue record in village form No.6 was already entered and nothing further was required to be done by the village secretary i.e. the accused and only the higher officers i.e. first revenue Karkun or the Mamlatdar is authorized to certify the entry entered in village form No.6 and unless any change is made or entry is certified in village form No.6, obviously in village form No.8/A, the name of the original occupant would remain there. When it is the case of the prosecution that when the first demand of bribe was made by the accused on 23.05.1985, then it was possible for the prosecution to examine the witnesses to prove that allegation because on that day, other three persons were very well there in the office of the Panchayat and other

servants of panchayat were also there to prove the presence of those three persons including the one Kurjibhai Bhesania whose name is reflected in the document because he had also paid revenue in the panchayat office on 23.05.1985. Complainant has accepted that he is the cousin- distant relative of said political worker Kurjibhai Bhesania and, therefore, under his political motivation, the complainant has agreed to file the complaint and a party in a forged trap case. In those days i.e. in the year 1984-85, the society at grass-root level was divided into groups of persons and persons from SC & ST community were treated differently especially when such person is in a government or semi-government service and the accused being a person from SC Community, he was targeted by Kurjibhai Bhesania and the complainant.

5. Mr. Shethna has taken this Court through the entire set of evidence, mainly the oral evidence of the complainant, panch No.1 Sharad Hathi and trapping officer Mr. Sarvaiya along with other documentary evidence. To appreciate the say of Mr.

Shethna, firstly I would like to state the basic case of the prosecution in brief which is reflected in para-2 of the memo of the appeal. For the sake of brevity and convenience, I would like to reproduce the facts stated by the appellant himself in the memo which are mostly similar to the facts reflected in the first para of the judgment under challenge. Para-2 of the appeal memo reads thus:-

> “2. On 22.01.1984, Jivraj Gangdas Bhesania, father of the complainant approached the accused who was the Revenue Talati-cum-Mantri (Secretary) of village Bhesan for the mutation of the entries in the Records in the names of the heirs of his deceased father Jivrajbhai. He gave an application to him for that. He approached asked the Accused after about 6 months and thereafter on more than one occasion to know what was done. The Accused told him that work of mutation of entries of others also remained to be done and along with their work his (the complainant's) work would also be done. The complainant wanted to obtain loan from

Co.Operative Society, for that to become a member was “a must” and for that purpose one must be the “the Khatedar”. On 23.05.85, he went to pay the revenue amount in the office of the accused. He paid it, for that receipts exh.21 & 22 were given to him. At that point of time, he told him about the mutation of entries. The accused demanded the bribe amount of Rs.500/. The complainant told him that his work was legal and in summer season Rs.500/ was a big amount which he could not afford. “Before the work could be done, pay Rs.400/. After it is done pay Rs.100/” was the accused's demand. And he asked the complainant to pay Rs.400/- at 8.00 P.M. on the next date i.e. to say on 24.05.1985 at his (the accused's) residence. The complainant approached P.W.4 & P.I. Bharatsinh Sarvaiya Exh.33 A.C.B. Rajkot on 24.05.1985 at 2.15 P.M. at Rajkot. He gave his F.I.R. Exh.24. (1) P.W.3 Sharad Dinkarrai Hathi Exh.31 and (2) Mansukhbhai Tapubhai Parmar, Dy. Mamlatdar, Rajkot and employee in the District Panchayat, Rajkot respectively were called as “the Panchas”

and the first part of the panchanama Exh.32 was drawn between 3.30 p.m. and 5-15 P.M. on 24.05.1985. The raiding party went to Bhesan, on the first occasion, the complainant and the Panch No.1 went to the house of the accused. He was not there. They went to P.I. Sarvaiya. They were instructed to go again. At 9.10 P.M., they again went to his house. The accused demanded and accepted the bribe amount of Rs.400/ from the complainant. Second part of the panchanama exh.31 was completed at 11.00 P.M.”

6. Mr. AJ Desai, ld. APP appearing for the State has argued that the findings recorded by the ld. Trial Judge are absolutely legal and no material error can be said to have been committed in appreciating the oral as well as documentary evidence led during the course of the trial. It is argued that there are no material contradiction or omission in the deposition of the complainant and as per the settled legal position, ignoring all other evidence if the version of the complainant in a trap case is found reliable, the accused can be linked with the

crime. It is not necessary to reproduce the comments made by the Apex Court as to what should be the approach of the Court in corruption cases where the case rests either on the deposition of the complainant only and/or panch No.1 and accused has been held guilty on the deposition of trapping officer only when he himself has witnessed any material part of the offence that has occurred at the time of passing of bribe amount from the hands of the complainant to the hands of the accused. In this background, if the impugned judgment of the ld. Trial Judge is read, there is no need to comment on the evidence of the raiding party i.e. panch No.1 Sharad Hathi and/or Mr. Sarvaiya, PI of ACB. However, according to Mr. Desai, the evidence of Mr. Hathi should not be discarded merely because he was an accused in two other criminal cases. Of course, his discharge application was rejected by the ld. Magistrate, but on the date of his selection as a panch, no such discharge application was rejected. It was probably was not even filed. Mr. Desai has taken this Court through the allegations made in the chargesheet produced by the accused along with his

statement under section 313 of CrPC and it is alleged that Mr. Hathi is accused No.3 in the first criminal case registered against him for the offences punishable under section 420 R/w section 114 of the Indian Penal Code. As pointed out by Mr. Desai, this case is in relation to 141 cement bags. The cement was essential commodity at that point of time and was regularized by the State and only authorized persons were entitled to withdraw the cement from the government godown. Accused Nos. 1 & 2, as per the case of the prosecution, were responsible in siphoning those cement bags. Accused No.2 was the person responsible and he has posed him as a person in whose name the permit was granted. Accused No.3 i.e. panch No.1 Mr. Hathi was in charge of the godown. On seeing permit and the person, he must have handed over 141 bags of cement. So, he was the person responsible for the delivery of the cement. This Court is not supposed to comment on the merit of the criminal case because the Court is not aware about the out come of the said criminal case, if decided, but if the allegations made in the criminal case are seen, it would not be proper for the Court to discard

the evidence of panch No.1 Mr. Hathi merely because he is an accused in a criminal case. The allegations in the complaint filed against him can not be said to be the allegations against the character or his involvement in an offence against the public morality. In the same way, the second prosecution, according to Mr. Desai, is a technical prosecution and in 100s of such or similar cases, ultimately such cases were subsequently withdrawn by the State. Mr. Desai, however, has shown his ignorance as to what had happened to the prosecution lodged against panch No.1 Mr. Hathi along with other persons named in the second complaint. It is true that panch No.1 was actively involved in the agitation against the reservation policy and, therefore, his involvement or activism as panch No.1 in a trapping case and that too against an accused being number of SC community requires to be viewed strictly. As per the settled legal position and as observed by this Court in the case of **Ambalal Motibhai Patel v/s State, Vol.-I 1960 GLR 113,** the panch witness is not a trap witness. Panchas have nothing to do with the raid or the operation of the raid. They are not participators in

the act of raiding. It can not be said that the evidence of every panch witness who takes part in the laying of a trap in cases of bribery can be regarded as evidence of partisan witness. This would always depend upon the circumstances of each case. If it is found that the witness is otherwise reliable and there is an element of independence, his association in a pre-arranged raid should not be viewed with doubt. It is true that in the present case, the conviction could not have been made on the sole evidence of panch witness, but the ratio of the decision in the case of **Lachman Dass v/s State of Punjab, AIR, 1970 SC 405** would help the prosecution. I do not find any grave fact to dube the panch witness as interested witness in absence of any adverse material justifying the interference in the finding recorded by the ld. Trial Judge. ***(Maha Singh v/s State, AIR 1976 SC 449).*** In these particular facts situation, it would be the duty of the Court to scan the evidence of this witness closely. The complainant is the person aggrieved by the illegal demand made by the accused and Mr. Sarvaiya has no reason to implicate the accused in

such a serious offence merely because he belongs to SC or ST community. According to Mr. Desai, when evidence of Mr. Hathi gets corroboration from these two persons viz. one person aggrieved and other who has investigated the crime and drawn the panchanama, the say of Mr. Hathi should not be rejected in toto. It is true that if the complainant would not have supported the case of the prosecution in the present case, the accused could have been given some benefit because Mr. Hathi was found active in agitation against reservation policy, but this is a case where three persons have deposed that accused when was caught by PI Mr. Sarvaiya, was possessing muddamal currency notes in the closed fist of his right hand. As such, there is no detailed cross-examination of any of these three witnesses as to the anthracene powder marks that were found on both the hands of the accused. The accused had attempted to explain that the complainant forcibly handed over the muddamal currency notes to him. The question would be that why he continued and caught hold of those notes even for a while? Any act against the will or wish of a person would automatically get some reaction and it appears

from the deposition of the complainant and panch NO.1 Mr. Hathi that no such reaction was there from the accused. During the cross-examination, no such suggestions even were made. When Mr. Sarvaiya had entered the house, it was about 9.15 P.M. It being dark, the complainant was asked to give a signal by raising a particular shout and he was asked to utter a particular set of words. Those words were uttered. There is no parrot-like similarity in the depositions of the complainant as well as panch No.1 as to the conversation that has taken place at the residence of the accused. The material part of the conversation corroborates the prosecution case and when the complainant gets corroboration from the deposition of panch No.1 and when the accused was found in possession of the muddamal currency notes when he was caught hold by PI Mr. Sarvaiya, the ld. Trial Judge was entitled to raise presumption against the accused. Of course, there is no cogent evidence as to the demand made by the accused of illegal gratification on 23.05.1985, but trap was arranged on the demand made on 23.05.1985 and the trap was arranged on 24.05.1985. The efforts to get the

entries certified had failed till 23.05.2006 and there is sufficient evidence to show that on the date of trap, the accused did demand the amount of bribe. The demand was for Rs.500/ and it was decided that initially the complainant should pay Rs.400/ and the remaining amount of Rs.100/ was to be paid on certification of the entry in village form No.6.

7. The Court finds some strength in the arguments of ld. APP Mr. Desai that the evidence of the prosecution witness namely the complainant should be appreciated in the background of the scheme of section 135(c) and section 135(d) of the Bombay Land Revenue Code (BLRC for short). Since February-1985, the complainant and his family members were trying to get the names mutated after the death of the original owner of the agricultural land i.e. Jivrajbhai. The names of three brothers and sister Rambhaben were to be entered in the record of rights i.e. village form No.6. Notice required to be served to all concerned was served to the complainant. Signature of the complainant in the notice under section 135(d) of BLRC is shown to the Court by Mr. Shethna, ld. Senior

Counsel appearing for the appellant accused, would not help the accused. This signature would simply show that the procedure of entering the name has started and if any of the family members has any objection as to the mutation of entry, can approach the Panchayat and register his resistance. The scheme provides that if any resistance is received by the panchayat, then that entry would be transferred and mutated to the register maintained for the purpose of recording the disputed entry and the revenue authority is supposed to resolve the dispute raised against the details given in the notice served under section section 135(d) of BLRC. The dates are relevant. The notice under section 135 BLRC was served to the complainant in the month of March-1985. This Court has reason to believe that the notice must have been affixed on the conspicuous place in the village including the village panchayat and there is no evidence to show that anybody had formally objected the mutation. The reputed person of village has certified the names of the heirs and it was available with the village secretary. It was the duty of the secretary to get the entry

certified at the earliest because it has remained only a formality in absence of any resistance or dispute. This work was prolonged and it is argued that this was done with an ulterior motive to extract some more amount from the family of the complainant. It is, therefore, stated in the deposition by the complainant that as the entry was to be mutated in accordance with law, why family of the complainant should pay any illegal gratification to the secretary of the village panchayat and that had taken the complainant to the office of the ACB, Rajkot. There is no conflict in evidence as to the amount demanded and the sequence stated by the complainant and panch No.1 as to the transfer of that amount from the hands of the complainant to the accused. So, it is not possible for the Court to accept the arguments of Mr. Shethna that the ld. Trial Judge has wrongly held that the presumption can be raised against the accused under section 4 of the PC Act.

8. The alternative argument advanced by Mr. Shethna that the presumption raised by the trial Court has been successfully rebutted by the accused,

is not found acceptable. On the contrary, it appears that the accused had tried to explain and justify the delay caused in certification of the entry made prior to the month of March-1985, though there were no objections to the mutation of the entry. The first entry made by the village secretary in the village form itself is popularly known as “pencil entry” i.e. “kachcha entry”. It is subject to the addition, alteration, rejection including the resolution of the dispute by the competent authority. Thereafter only the final entry is being made and entry gets finality on its certification either by first revenue karkun popularly known as “Aval Karkun” and/or Mamlatdar. Certified copy taken by the officer Mr. Sarvaiya clearly shows that there is no remarks in the remark column of village form No.6 even on the date on which the trap was carried out. Obviously therefore, the name of the original owner i.e. the name of the deceased Jivrajbhai is reflected in village form No.8/A. The family of the deceased Jivrajbhai normally would not get any advance of loan by any Bank or Co.Op.Society unless the name of the loanee is reflected in the village form No.8/A which

is popularly known as “Khata”. Agriculturists would be anxious to get the loan at least before monsoon or in the midst of monsoon so that they can utilize the amount for the development of the crop. In the present case, entire things were prolonged and dragged from February 1985 to August 1985 for no reason. So, it is difficult for the Court to accept that this is a case of no motive on the part of the village secretary. It is true that the village secretary has no authority to certify the entry, but he is the key revenue officer who can take the register to the office of the Mamlatdar or can arrange for visit of a responsible officer to the village so that all entries either can be certified or any other order in accordance with rules under the Code can be passed.

9. I have carefully gone through the reasons assigned by the ld. Trial Judge for holding the accused guilty. It is true that the accused-village secretary has committed suicide with his wife and it is alleged that because of the financial crunch and hardship, the accused had committed suicide after the

lapse of 9 years of filing of the appeal. The Court feels some unrest for the out-come of the delay that has taken place in hearing and disposing of the appeal well in time. But that by itself would not be sufficient to say that the finding recorded by the ld. Trial Judge is illegal or perverse. Even after taking out the deposition of Mr. Sharad Hathi when it is not possible for the Court to say that the accused could have been given benefit of doubt by the trial Court, it is difficult for the Court to accept the appeal.

10. It is true that this Court as well as the Apex Court has made observations and made comments as to the use of anthracene powder while laying the trap in ACB cases. The use of phenolphthalein powder is considered as more reliable, but the cases in which the deposition of the complainant and/or panch witness as to passing of the muddamal currency notes to the accused is reliable, then tallying of the numbers of the muddamal currency notes with the numbers mentioned in the first part of the panchanama becomes very relevant. In the present case, it is

true that when the accused was caught by PI Mr. Sarvaiya, the muddamal currency notes were in the closed fist of right hand and more than one witnesses have consistently said that the anthracene powder marks were visible on both the hands i.e. on the fingers of both the hands. So, it is difficult for the Court to accept the submission of Mr. Shethna that the defence placed by the accused of forcibly handing over the muddamal currency notes is either good or sustainable. It is argued by Mr. Shethna that even after the entry of ACB Inspector in the room and acceptance of the muddamal currency notes, would be different than alleged and the accused would not have kept the muddamal currency notes in his closed fist. He could have thrown the same. This argument is not found convincing because there is evidence as to willful acceptance of the amount and an individual accused may react in a different way. A confused person may not react at all. One is likely to become a statue. This aspect needs consideration. So, it will be difficult for the Court to say that the recovery of muddamal currency notes from the closed fist is improbable.

11. The time period in reference to the initiation of the entry proceedings from January 1985 when Pedhinama was prepared for the first time on 08.01.1985, if considered vis-a-vis the actual date of complaint in the background of the explanation given by the accused under section 313 of CrPC, hidden motive to extract the money can be said to be emerging and, therefore, the oral evidence of the complainant as to the demand of money gets some corroboration from this aspect. In the same way, the evidence given time-wise by the complainant, panch No.1 Mr. Hathi and PI Mr. Sarvaiya after the entry second time in the house of the accused corroborates each other substantially. There was no need to have any evidence of peon of the Panchayat because he is found to be in picture only in reference to the service of notice under section 135(d) of BLRC and it would be difficult to presume that merely because four or five persons have paid revenue to the Sate on 23.05.1985, all of them had entered the office simultaneously on that day. In the same way, it is not suggested directly or indirectly to the

complainant that on 23.05.1985 when demand of bribe was made for the first time, other servants of Panchayat were there in Panchayat office. This aspect could have been brought on record by some detailed cross-examination of the complainant in this regard. It is true that the government servant unless it is otherwise proved, are presumed to be available in the office, but considering the nature of the duty of village panchayat servants, such inference can not be drawn and for that purpose, some cogent facts require to be brought on record that other panchayat servants were also present at the time when the complainant had entered the Panchayat office for paying land revenue on 23.05.1985. In number of cases, when the accused is not available at the place suggested for accepting the bribe amount, than the raiding officer decides to make one more attempt and this by itself would not make the raiding officer interested in false implication of the accused. He may be interested in drawing the successful panchanama, but not in implicating the accused falsely.

12. The statement of the accused made before the Investigating Officer is inadmissible but in ACB case, the immediate explanation of the accused to the raiding officer is if consistent to the defence taken by him or in other words the defence taken by the accused is consistent to the immediate first explanation given to the raiding officer, than such a statement of the accused positively can be used by the Court with a view to appreciate the case of the prosecution and its strength. Here in the present case, it has come on record that a pointed question was asked to the accused by Mr. Sarvaiya, but the accused had not responded to that question. The accused being authorized to recover the village revenue, such question was required to be asked by the IO and when it is impliedly on record to show that the revenue of the deceased land owner, father of the complainant was paid earlier, there was no scope to accept any amount from the complainant so far as the accused is concerned and that too Rs.400/ which can be said to be a big amount in those days. Totality, therefore, in my view, has been correctly appreciated by the ld. Trial Judge and, therefore,

the arguments advanced by ld. Senior Counsel Mr. Shethna, are not found acceptable. The reasonings given and findings arrived at by the ld. Trial Judge are absolutely just, legal and based on sound and proper appreciation of the oral as well as documentary evidence and hence no interference is required. Hence, there is no merit in the present Criminal Appeal and the same requires to be dismissed.

13. In the result, present Criminal Appeal is hereby dismissed. The impugned judgment and order of conviction and sentence passed by the trial Court is hereby confirmed. Since, the appellant accused has expired, no orders as to granting time to him to surrender for serving out the sentence is required to be passed.

[C.K. BUCH, J]

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